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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,699	01/21/2004	Thomas M. Conway	6570/91346	3354

24628 7590 07/28/2006

WELSH & KATZ, LTD  
120 S RIVERSIDE PLAZA  
22ND FLOOR  
CHICAGO, IL 60606

EXAMINER

NEWTON, JARED W

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



### **DETAILED ACTION**

This non-final rejection is in reply to the remarks filed May 12, 2006, by which claims 1, 2, 6, 7, 9, and 12 were amended, claim 8 was canceled, and claims 13-21 were added.

#### ***Drawings***

The drawings were received on May 12, 2006. These drawings are in compliance with the Drawing Requirements, and entered herewith.

#### ***Specification***

Applicant is thanked for his corrections to the Specification filed May 12, 2006. Previous objections to the Specification are hereby withdrawn.

#### ***Claim Objections***

The claims are objected to because of the following informalities:

- "that" should be changed to --each-- in line 8 of claim 13;

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "about " in line 9 is a relative term which renders the claim indefinite.

Claims 1, 2, and 12 stand rejected, and claims 7, 13, 14, 15, and 20 are rejected under the second paragraph of 35 U.S.C. 112 as indefinitely claiming the subject matter that the applicant regards as his invention.

The claims noted above positively set forth a safety net system, and functionally set forth a rack to which said system is to be mounted through the following recitations of the preambles of claims 1 and 13: "A safety net system for mounting to a rack having a pair of spaced apart upstanding posts, the rack adapted for...the safety net comprising:" (claim 1) and "A safety net system for mounting to a rack having a pair of spaced apart upstanding posts with structural members connected to the rack posts, the safety net comprising:" (claim 13). Thus, the rack itself is not a part of the claimed invention, and it is improper to claim the invention based on its relationship to an unclaimed element. The following recitations improperly set forth the safety net system relative to the unclaimed rack:

- "variably mountable to the rack posts" (claim 1, ln. 17);
- "mountable to the respective rack post" (claim 1, ln. 19
- "adjacent the rear of the respective rack post" (claim 1, ln. 20);
- "apart from the respective rack post" (claim 1, ln. 21);
- "the rack includes an upper beam and wherein the net is removably mountable to the upper rack beam" (claim 2, ln. 2-3);
- "the respective rack post" (claim 7, ln. 3);
- "adjacent rear surfaces of the rack posts" (claim 12, ln. 3);

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- “to enable mounting of the first upright to one of the rack posts” (claim 13, ln. 11-12);
- “to enable top edges of one of the rack posts to fit...” (claim 14, ln. 6-7);
- “mountable to one of the rack posts” (claim 15, ln. 5);
- “mountable to a respective one of the rack posts” (claim 20, ln. 2).

If the Applicant wishes to claim only the subcombination of the safety net system, as interpreted and treated on the merits herein, then the above noted improper positive recitations should be corrected. However, if the Applicant wishes to claim the combination of the safety net system and the rack, then the preamble of claims 1 and 13 should positively set forth said combination.

### ***Claim Rejections - 35 USC § 102***

*Insomuch as understood in view of the 35 USC 112 2<sup>nd</sup> Paragraph rejections above, claims 1-5, 7, 12, 13, and 15-21 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,609,621 to Denny et al.*

In regard to claim 1, Denny et al. disclose a net apparatus for mounting to a rack 100, the safety net comprising: a pair of spaced apart uprights 740; upper and lower mounts 140 capable of connecting said uprights to a rack post; an upper element 240 extending between and mounted to the uprights at about an upper portion of the uprights; a net 200 extending between and mounted to the uprights and mounted to the upper element, wherein the net is removably mounted to the uprights and to the upper elements, and wherein the uprights are capable of variably mounting to a rack's posts to

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vary a height of the net above the posts (see FIG. 1), and wherein the first upright is capable of mounting to a rack post with at least part of the front of the first upright being adjacent the rear of said respective rack post and the opposing open rear of the first upright being spaced apart from the respective rack post.

In regard to claim 2, the net system set forth by Denny et al. is capable of mounting to an upper rack beam via carabiners.

In regard to claim 3, said upper element comprises a rigid cable, wherein a cable can be defined as a rigid element when pulled tight.

In regard to claims 4 and 5, Denny et al. disclose the safety net system in accordance with claim 1, said system further comprising a plurality of closable loop carabiners 226 for mounting the net 200 to the uprights 740 (see FIG. 1) (see Column 2, Ln. 51-53).

In regard to claim 7, Denny et al. further disclose the safety net system in accordance with claim 1 wherein the lower mount 140 is formed as a pair of legs mounted to the uprights 740 and capable of mounting to a rack's posts (see FIG. 7).

In regard to claim 12, said uprights 740 are structured and dimensioned so as to be capable of mounting adjacently to the rear surface of a rack's posts.

In regard to claim 13, Denny et al. set a safety net apparatus comprising: a pair of spaced apart uprights 740; a net 200 extending between and removably mounted to said uprights; each of the uprights having two opposing sides; the two sides being connected to each other at a first portions of each upright; a front and a rear of a first

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one of the uprights being open at a second portion of the first upright; the first upright being structured and dimensioned so as to be capable of mounting to a rack post so that some structural member is capable of passing between the two sides of the upright, and through the open front and rear second portion of the first upright (see FIG. 7).

In regard to claim 15, Denny et al. disclose a lower mount 140 comprising two spaced apart legs being secured to the sides of the uprights 740 (see FIG. 7), wherein said legs are capable of being mounted to a rack's posts.

In regard to claim 16, Denny et al. further disclose an upper element 240 comprising a rigid cable, wherein a cable can be defined as a rigid element when pulled tight.

In regard to claims 17 and 18, Denny et al. further disclose an upper element 240, extending between and mounted to the uprights 740; and the net 200 removably mounted to the upper element via a plurality of closed loop fastening carabiners 226 (see FIG. 7).

In regard to claim 19, said net is maintained in tension between said uprights (see FIG. 7).

In regard to claim 20, said uprights are capable of variably mounting to a rack's posts in order to vary the vertical location of the net relative to a rack's posts.

In regard to claim 21, Denny et al. further shows a typical upright 120, wherein the rear is open along most of its length, and the front comprises openings 124 along its entire length, making said upright "open".

***Claim Rejections - 35 USC § 103***

Claims 6, 9, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over '621 to Denny et al. as applied to claims 1-5, 7, 12, 13, and 15-21 above, and further in view of US Patent No. 6,619,490 to Calleja.

In regard to claim 9, Denny et al. disclose an apparatus comprising all of the limitations of claims 1 and 8 as set forth above, but do not disclose the upper portions of said uprights at the rear side as closed. Calleja discloses a netting system comprising uprights having closed upper portions. The Denny et al. and Calleja references are analogous art because they are from the same field of endeavor—rack and netting systems—and classified in the same US class/subclass. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the closed rear upper portions of the uprights as disclosed by Calleja on the rear of the upper portions of the uprights as disclosed by Denny et al. The motivation would have been to provide a closed upper section in order to protect the portions of the carabiner attachments disposed between the legs of the uprights.

In regard to claims 6 and 14, Denny et al. discloses said upper mounts comprising U-shaped elements having legs and a central connecting region, but does not disclose fingers depending from said legs. Calleja discloses a netting system comprising uprights 602 having upper and lower mounts, wherein said upper mounts include side plates 604 and 606 having downwardly depending fingers 630 and 632 defining notches, wherein a rack's top edge is capable of fitting into said notches (see



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FIGS. 6A and 6B). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the side plates of the mounts as disclosed by Denny et al. with the fingers as disclosed by Calleja, in order to provide the Denny et al. apparatus with a simple means of attaching to some rack—a motivation set forth by Calleja (see col. 4, ln.46-49).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over '621 to Denny et al. as applied to claims 1-5, 7, 12, 13, and 15-21 above, and further in view of US Patent Application Publication No. US 2004/0129660 to Kita.

Denny et al. disclose the apparatus comprising the limitations of claim 1 as set forth above, but does not disclose said net as wrapped around the upper element to maintain the net in tension. Kita discloses a rack comprising retractable screens, wherein said screen 1 operates in a first rolled position around an upper element in storage case 22, and a second extended position covering the face of said rack (see FIG. 2). The Denny et al. and Kita references are analogous art because they are from the same field of endeavor—rack and covering systems—and classified in the same US class/subclass. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the upper screen retracting element as disclosed by Kita in place of the upper element as disclosed by Denny et al. The motivation would have been to provide the rack as set forth by Denny et al. with a simple means of retracting the net when it is desired to access items stored on said rack behind said net. In operation, a user would simply need to release the lower and side carabiner

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attachments from the net, and then engage the motor of the retracting element in order to roll the net to a stored position, allowing articles to be stored on or removed from the rack. The retracting element would be an obvious improvement for allowing the net to be retracted and adjusted to various heights.

In regard to claim 11, Denny et al. disclose the net as maintained in tension between the uprights via straps 216 and buckles 220 (see FIG. 2).

### ***Response to Arguments***

At the outset, the Applicant is thanked for identifying the Examiner's error in the Office Action dated March 8, 2006, in which the Examiner inadvertently referenced US Patent No. 6,698,604 to Denny et al., and intended to reference US Patent No. 6,609,621 to Denny et al.

Applicant's arguments filed May 12, 2006 have been fully considered, and are addressed below. The arguments are addressed and referenced as numbered in the Remarks filed May 12, 2006.

With respect to item 4, the 35 USC 112 2<sup>nd</sup> Paragraph rejections stand as set forth above. The Examiner has attempted to further explain the reasoning behind said rejections, and has also proposed possible corrections to obviate the rejections. The "rack", as currently recited in the claims, is not part of the claimed invention. If the Applicant wishes to include said rack and its elements as part of the claimed invention, then said rack should be set forth positively in the preamble of the claims, as being in combination with the net system. On the other hand, if the Applicant wishes to not

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include the rack and its elements as part of the claimed invention, then the rack should not be positively recited anywhere in the claims. The claims have been treated herein under the latter situation, whereby the functionally recited (and therefore unclaimed) rack and its elements need not be explicitly shown. Rather, a reference need only *be capable* of being used in such a way as claimed.

With respect to item 5, Applicant recites, "...is clarified by defining the side of the upright adjacent the rack post as the front, defining the opposing side of the upright as the rear, and defining the side of the rack post to which the upright has to be mountable...The open rear is not disclosed by Denny or any of the other cited references" (see Remarks, Pg. 11). In light of the functional interpretation of the "rack" and its components, the following limitations are deemed to set forth the intended use of the net safety device relative to some rack. It follows that the Denny reference meets the claim limitations because it is capable of mounting to the rear of some rack, thereby defining its front side as the side "adjacent" said rack. Likewise, Denny meets the limitations of claim 2, because the net is capable of mounting to an upper rack beam of some rack.

Applicant's arguments with respect to claim 6 have been fully considered and are persuasive. The 35 U.S.C. Section 103 rejection of claim 6 from the Office Action dated March 8, 2006 has been withdrawn. Claim 6 has been treated on new grounds of rejection advanced above.

With respect to claims 10 and 11, The Kita and Denny references are considered analogous art because they relate to a common endeavor. Each invention describes a

rack, and a means for covering the rack so as to allow articles stored thereon to be accessed when said means is removed, and in storage when said means is in place. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." See MPEP 2141.01(a). Although Kita does not disclose a safety net, his means of covering and exposing a rack would commend itself to an inventor such as Denny who aims to solve the problem of removably covering the front face of a rack. It is further noted that the upper element contained in the storage case 22 disclosed by Kita supports the screen in tension at various heights as the screen is wound around said element. The lower rod attached to screen 1 (see FIG. 5) maintains a constant downward tensile force on said screen, regardless of the screens height.

In regard to item 6, Applicant recites, "None of the cited references disclose uprights open in the front and rear, allowing the upright to be mounted to a rack post on the same side of the rack post to which structural members are connected" (see Remarks, Pg. 12). Applicant again relies on the present invention's relationship to a functionally recited rack and its elements, in order to define the invention.

It is further noted that the claims rely on vague and relative terms. The terms are open to broad interpretation, and many are defined relative to the functionally recited

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rack. The following list, although not exhaustive, provides terms that are broadly interpreted: "upper portion", "adjacent", "spaced apart", "rigid", "first portion", "second portion", "upper element", "open front". It is suggested that these terms be more thoroughly defined in the claims, as part of the safety net system, and not relative to an unclaimed rack, in order to set forth that the Applicant regards as his invention over the prior art.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

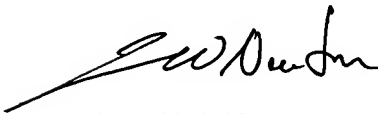
- US Patent No. 3,468,430 to Lawman
- US Patent No. 4,292,902 to Barrineau
- US Patent No. 5,524,402 to Sykes

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Jared W. Newton  
July 17, 2006  
JWN



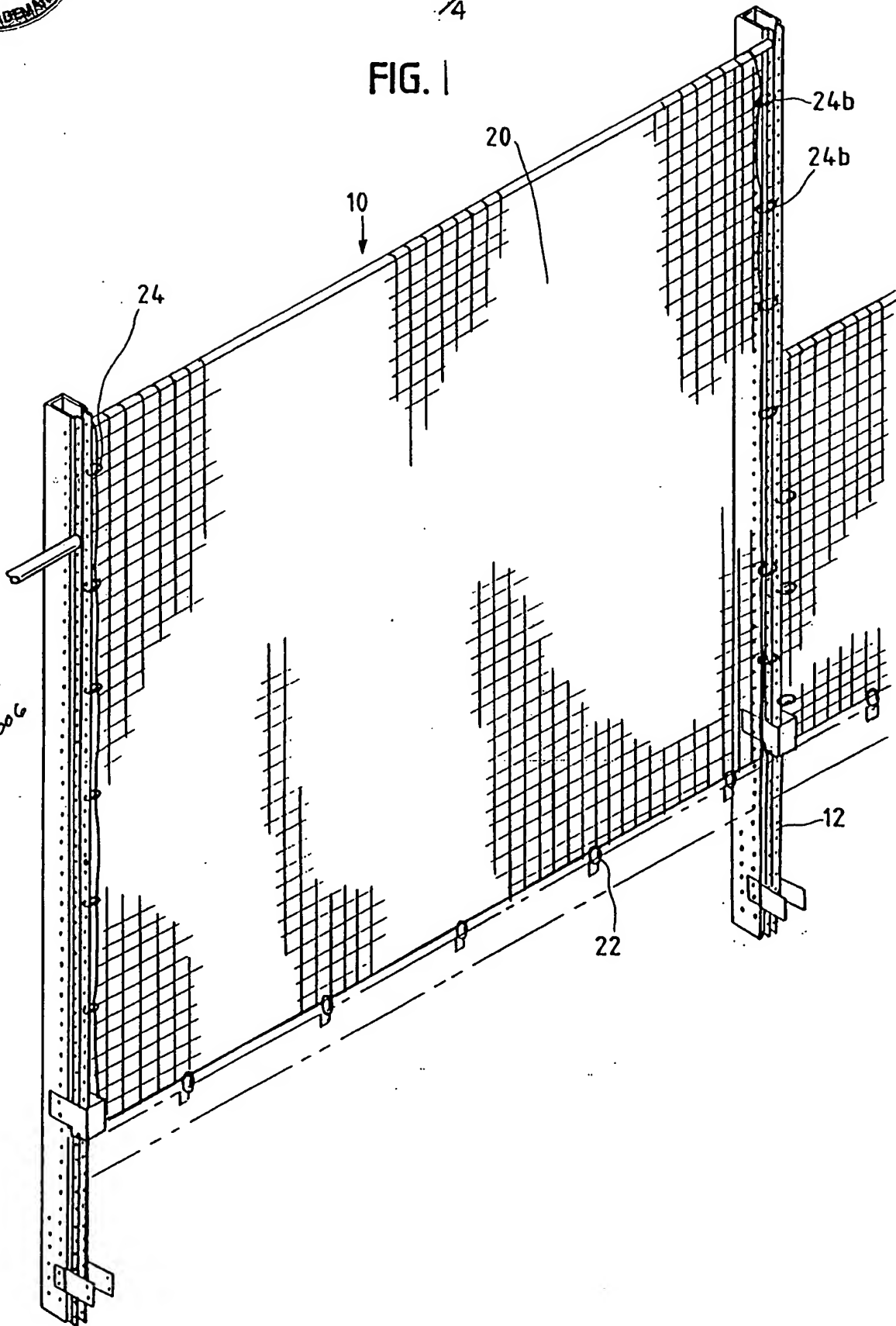
**RICHARD E. CHILCOT, JR.**  
**SUPERVISORY PATENT EXAMINER**



Thomas M. Conway  
ADJUSTABLE SAFETY NET SYSTEM  
Serial No. 10/761,699  
Replacement Sheet

1/4

FIG. 1



OK to enter.  
ZWN 07/13/2006